

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 19 be amended to read as follows:

- 1           Page 12, between lines 30 and 31, begin a new paragraph and insert:  
2           "SECTION 7. IC 6-3-1-34.5, AS ADDED BY P.L.211-2007,  
3           SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4           JANUARY 1, 2008 (RETROACTIVE)]: Sec. 34.5. (a) Except as  
5           provided in subsection (b), "captive real estate investment trust" means  
6           a corporation, a trust, or an association:  
7               (1) that is considered a real estate investment trust for the taxable  
8               year under Section 856 of the Internal Revenue Code;  
9               (2) that is not regularly traded on an established securities market;  
10              and  
11              (3) in which more than fifty percent (50%) of the:  
12                  (A) voting power;  
13                  (B) beneficial interests; or  
14                  (C) shares;  
15              are owned or controlled, directly or constructively, by a single  
16              entity that is subject to Subchapter C of Chapter 1 of the Internal  
17              Revenue Code.  
18              (b) The term does not include a corporation, a trust, or an  
19              association in which more than fifty percent (50%) of the entity's voting  
20              power, beneficial interests, or shares are owned by a single entity  
21              described in subsection (a)(3) that is owned or controlled, directly or  
22              constructively, by **any of the following**:  
23                  (1) A corporation, a trust, or an association that is considered a  
24                  real estate investment trust under Section 856 of the Internal

Revenue Code **but is not an entity defined in subsection (a).**

(2) A person exempt from taxation under Section 501 of the Internal Revenue Code. ~~or~~

(3) A real estate investment trust that:

(A) is intended to become regularly traded on an established securities market; and

(B) satisfies the requirements of Section 856(a)(5) and Section 856(a)(6) of the Internal Revenue Code under Section 856(h) of the Internal Revenue Code.

**(4) A corporation, trust, association, or partnership organized outside the laws of the United States that meets all of the following conditions:**

**(A) At least seventy-five percent (75%) of the entity's total asset value at the close of the entity's taxable year consists of any combination of:**

**(i) cash and cash equivalents;**

**(ii) United States government securities; or**

**(iii) real estate assets (as defined by Section 856(c)(5)(B) of the Internal Revenue Code, including shares or certificates of beneficial interest in any real estate investment trust).**

**(B) The entity is:**

**(i) is not subject to tax on amounts distributed to the entity's beneficial owners; or**

**(ii) is exempt from entity level taxation;**

**(C) The entity distributes on an annual basis at least eight-five percent (85%) of the entity's taxable income (as computed in the jurisdiction in which the entity is organized) to the holders of the entity's shares or certificates of beneficial interest.**

**(D) Either:**

**(i) the shares or beneficial interests of the entity are regularly traded on an established securities market; or**

**(ii) a single entity or individual does not hold directly, indirectly, or constructively a share of the voting power or value in the entity that exceeds ten percent (10%) of the total voting power or value in the entity.**

**(E) The entity is organized in a country that has entered into a tax treaty with the United States.**

**(5) A listed Australian property trust (meaning an Australian unit trust registered under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market) or an entity organized as a trust, if a listed Australian property trust owns or controls, directly or indirectly, at least seventy-five percent (75%) of the voting power or value of the beneficial interests or shares**

1           **of the trust.**  
2           (c) For purposes of this section, the constructive ownership rules of  
3           Section 318 of the Internal Revenue Code, as modified by Section  
4           856(d)(5) of the Internal Revenue Code, apply to the determination of  
5           the ownership of stock, assets, or net profits of any person."  
6           Page 78, between lines 4 and 5, begin a new paragraph and insert:  
7           "SECTION 70. [EFFECTIVE JANUARY 1, 2008  
8           (RETROACTIVE)] **IC 6-3-1-34.5, as amended by this act, applies**  
9           **only to taxable years beginning after December 31, 2007.**"  
10          Renumber all SECTIONS consecutively.  
            (Reference is to ESB 19 as printed February 22, 2008.)

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Representative Friend